**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE**

**WRIT PETITION NO. 3187 OF 2007**

Baburao Tatoba Medhe.... Petitioner

versus

Kedari Balnath Dawari
(since deceased)
L.Rs. Smt. Kuktabai Kedari Dawari
and others. ..... Respondent.

Shri N.J.Patil for the petitioner
Shri Amit Borkar for Respondent no.2

**CORAM; A.P. DESHPANDE, J.**
**DATED; 10TH OCTOBER, 2007**

**P.C.;**

1. The Plaintiff instituted a suit for redemption of mortgage and for possession against the defendants. The present petitioner Baburao was a minor when the suit was instituted and he was impleaded as defendant no.2 through the natural guardian mother. The regular Civil Suit No.356/67 came to be decreed after about 34 years on 22-11-2005. Record reveals that the issue of tenancy was raised by the defendant and thus the tenancy issue was referred to the Tenancy Authority under the Tenancy Act. It is the case of the present petitioner that after he attained majority he joined defence service in the year 1972 and came to be discharged from service in the year 1993. Thereafter

the petitioner settled along with his family at his native place. As mentioned hereinabove the suit came to be decreed on 22-11-2005. Belatedly the present petitioner filed an appeal and as there was a delay of about 225 days, an application was moved under section 5 of the Limitation Act, seeking condonation of delay. The rejection of the said application has given rise to the filing of the instant writ petition.

2. In the application the petitioner had contended that he was not aware about the pendency of the suit and he was not informed by his family members about the suit being decreed. The evidence of the parties was recorded before the first Appellate Court and the first Appellate Court has recorded a finding that the petitioner/applicant has failed to show sufficient cause for condonation of delay in filing of the appeal. It appears that the petitioner contended before the first Appellate Court that after attaining majority the petitioner was never separately noticed. The court has held that there is no such requirement of law. Impugned order also goes to observe that the petitioner had taken active part in the tenancy proceeding which were conducted on reference of the tenancy issue by the Civil Court to the Tenancy Authorities. Perusal of the record reveals that the interest of the petitioner was taken care of and

protected by his mother as a natural guardian and the suit was contested for a long long period of 34 years. Having found that the interest of the petitioner was properly represented in the suit and that there is no justification for condonation of delay, the impugned order has been passed. The first Appellate Court takes a possible view of the matter which does not require any interference at the hands of this court. Hence writ petition is dismissed summarily.

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